TWICE IN JEOPARDY. — If the newspaper accounts are correct, the Supreme Court of Connecticut has recently rendered a decision which will attract much attention. It is reported that in a criminal case (*State* v. *Lee*) the State has secured a new trial on appeal for error of law. In the court below the prisoner was acquitted of having caused the death of a patient by a criminal operation. By the decision of the Supreme Court he is subjected to a second trial without his consent. There is no reason to believe this decision unsound. The Fifth Amendment in the United States Constitution, providing that no person be "subject for the same offence to be twice put in jeopardy of life or limb" is now admitted to be a restriction on the Federal Government alone (108 Mass. 5; 7 Peters, 243; 20 How. 84). The Constitution of Connecticut contains nothing on the subject, so that a statute providing for a second jeopardy would be constitutional (Green Bag, vi. 373). Connecticut has a statute allowing the State an appeal for error of law in criminal cases (Gen. Stat. Conn., § 1637, being Conn. Stat. 1886, ch. 15). Several other States have similar statutes, but they are not construed to give the prosecution a new trial after acquittal. (Cf. McClain's Iowa Code, §§ 5921, 5924; Bish. New Crim. Law, 8th ed., I., § 1024.) That is, however, because of restrictions in the State Constitutions as to second prosecutions. In Maryland, where no such restriction is contained in the Constitution, the State has been allowed to secure on writ of error a reversal of a judgment given in favor of the defendant; and this, apparently, in the absence of statute (*State* v. *Buchanan*, 5 Har. & J. 317). In Connecticut there is no constitutional difficulty in the way, and there does not seem to be any very good reason why the plain words of the statute should not be given the meaning attached to them in *State* v. *Lee*. As a matter of justice, it is difficult to see why the State should not have a new trial if there has been error in the proceedings. Why the rule forbidding a second jeopardy should apply here, and not where the trial has been on a defective indictment, is not very plain as a question of abstract justice. That the law is as stated is probably not to be explained by the circumstance that new trials came into use after the rule as to a second jeopardy had become settled. The law would probably have been the same even had new trials been of ancient origin. For, until within a comparatively recent time, carrying a criminal case up has generally been regarded as simply a further means of defence. That was the Continental view also, to the establishment of which Carpzow contributed more, perhaps, than any one else. If such a view ever was justified on political grounds, or grounds of expediency, it hardly seems to be now. Has not the time come to put the State on the same footing as the prisoner with regard to all means of modifying or reversing a judgment and obtaining a new trial? That is the law generally on the Continent under the codes. Such a change might be made by statute in several of our States, where there is no jeopardy clause in the Constitution (Maryland, Massachusetts, Vermont, and Virginia, and perhaps others. Colorado already has a sufficient provision in her Constitution).

Although the decision in the principal case is to be supported by reason of the Connecticut statute, the court seems in one place to use language very general in application. It is suggested that the first jeopardy is not exhausted until all the means have been used to secure a new trial. That is not the settled practice, and such a view would not be likely to meet with general acceptance.